M & M Electric Company, Inc. *and* International Brotherhood of Electrical Workers, Local Union 776, AFL–CIO, CLC. Case 11–CA–16531

March 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On October 4, 1996, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

The Respondent is a nonunion electrical contractor specializing in commercial and industrial electrical work on an on-call basis.[2] William Coker was hired on January 30, 1995, as a journeyman electrician and sent to work at the Westvaco Paper Mill, where the Respondent had three ongoing projects. Although Coker was a member of the Union when he was hired, he did not reveal any union affiliation until about February 17, 1995, after he learned that he had been identified as a voluntary organizer in a letter sent by the Union to the Respondent.

After 4 weeks, the Respondent transferred Coker from Westvaco Paper Mill to another project at Miles Chemical, where he worked with employee Aubrey Johnson. After 7 days, Coker and Johnson were transferred to Wando State Port Authority for the remainder of the week. At the end of that week, on March 10, the Respondent laid off Coker and three other employees.

Although we agree with the judge, for the reasons he states, that the Respondent laid off Coker because of his activity on behalf of the Union in violation of Section 8(a)(3) and (1), we do not agree that the evidence supports his finding that the earlier transfers were so motivated. As reflected in the record, the Respondent has established through unrebutted testimony that the project on which Coker had been working at Westvaco had ended, prompting the transfer to Miles Chemical, and that the light fixtures Coker and Johnson were to have installed at Miles unexpectedly had not arrived. The Respondent thus transferred both men[3] to its ongoing project at Wando State Port Authority, where Coker had, at his request, been assigned to work overtime. We find, therefore, that the Respondent has demonstrated that it had legitimate, nondiscriminatory reasons for transferring Coker, and that it would have done so even absent his union activity.[4]

Accordingly, we shall dismiss that allegation of the complaint.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, M & M Electric Company, Inc., Charleston, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Terminating employees because of their union support or affiliation."

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] As the judge noted, the Respondent is often called on to perform emergency and short-term projects.

[3] There is no evidence that Johnson was a member of the Union.

[4] See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities

WE WILL NOT threaten employees that applicants for employment will not be hired because of their union affiliation.

WE WILL NOT terminate employees because of their support of or affiliation with a union.

WE WILL NOT refuse to consider for hire or hire employees because of their union affiliation or perceived union affiliation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer reinstatement to William Coker and Edward Foxworth to their former positions or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees in those positions.

WE WILL, within 14 days from the date of the Board's Order, offer to hire applicants Roy Allen Benton, Robert Wyndum, James Paul Michi, Carolyn Pollack, Joel Yon, Gary McCutcheon, Joanne Thompson, and Gary Emory to the jobs for which they applied or, if those jobs no longer exist, place them on a preferential hire list for the next positions that become available for which they are qualified.

WE WILL make Roy Allen Benton, Robert Wyndum, James Paul Michi, Carolyn Pollack, Joel Yon, Gary McCutcheon, Joanne Thompson, Gary Emory, William Coker, and Edward Foxworth whole for any loss of earnings and other benefits resulting from the action against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the layoffs of William Coker and Edward Foxworth and our refusal to hire Roy Allen Benton, Robert Wyndum, James Paul Michi, Carolyn Pollack, Joel Yon, Gary McCutcheon, Joanne Thompson, and Gary Emory, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that these actions will not be used against them in any manner.

M & M ELECTRIC COMPANY, INC.

Jasper Brown, Jr., Esq., for the General Counsel.
R. Allisen Phinney, Esq. (Ogletree, Deakins, Nash Smoak & Stewart), of Charleston, South Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on January 17 and 18, 1996, in Charleston, South Carolina, pursuant to a complaint issued by the Regional Director for Region 11 of the National Labor Relations Board (the Board) on June 25, 1995. The complaint is based on a charge filed by the International Brotherhood of Electrical Workers, Local Union 776, AFL–CIO, CLC (the Union or the Charging Party) on May 8, 1995. The complaint as amended at the hearing alleges that M & M Electric Company, Inc. (the Respondent or the Company) violated Section 8(a)(1) of the National Labor Relations Act by interrogating employees about their affiliation with and/or membership in a union and threatened to deny employment because of union activities and violated Section 8(a)(3) and (1) of the Act by isolating its employee William C. Coker III and by transferring Coker and refusing to revoke the transfer of Coker and by laying off and refusing to rescind its lay off of Coker and its employee Edward G. Foxworth and by refusing to consider for hire and thereafter failing and refusing to hire the following employees named below, on or about the dates set opposite their names:

James Michi	January 30, 1995
Roy A. Benton	February 2, 1995
Melvin Summers	February 2, 1995
Arthur R. Watson	February 2, 1995
Robert W. Wyndum	February 3, 1995
Gary McCutcheon	February 9, 1995
Carolyn Pollack	February 13, 1995
Gary L. Emory	February 22, 1995
Joanne Thompson	February 22, 1995
Joel D. Yon Jr.	March 9, 1995

The Respondent has by its answer filed on July 10, 1995, denied the commission of any violations of the Act.

On the entire record in this proceeding, including my observation of the witnesses who testified here, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT[1]

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits, and I find at all times material here Respondent has been a South Carolina corporation with a facility located at Charleston, South Carolina, where it is engaged in electrical contracting services, that during the past 12 months, a representative period, Respondent purchased and received at its Charleston, South Carolina facility goods and materials valued in excess of $50,000 directly from points outside the State of South Carolina and in the course and conduct of its operations derived gross revenues in excess of $500,000 and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, Respondent admits, and I find that the Union has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent operates as a nonunion general electrical contractor. This case involves the hiring and employment practices engaged in by Respondent in early 1995, in response to efforts of the Union to have its members seek employment in order to "salt" its work force with union members in an attempt to organize Respondent's employees. Salting is a

[1] The following includes a composite of the credited testimony at the hearing.

practice utilized by the International Brotherhood of Electrical Workers (the International) and its local unions wherein its members apply for work at nonunion employers engaged in the construction and electrical contracting industry in order to organize their employees. In the recent case of *NLRB v. Town & Country Electric, Inc.*, 116 S.Ct. 450 (1995), the United States Supreme Court upheld the Board's position that paid union organizers are employees within the meaning of Section 2(3) of the Act. The Court held that the language of the Act "is broad enough to include those company workers whom a union also pays for organizing" and "board's broad literal interpretation of the word 'employee' is consistent with several of the Act's purposes, such as protecting the rights of employees to organize for mutual aid without employer interference," citing *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 798 (1945), and "encouraging and protecting the collective-bargaining process," citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 892 (1984). In that case the Court rejected arguments that salts "might try to harm the company perhaps quitting when the company needs them, perhaps disparaging the company to others, perhaps even sabotaging the company or its products." The Court noted that the Union's salting resolution in that case contained "nothing that suggests, requires, encourages or condones impermissible or unlawful activity . . . ." The Court also noted that, "If a paid union organizer might quit, leaving a company employer in the lurch, so too might an unpaid organizer, or a worker who has found a better job, or one whose family wants to move elsewhere. And if an overly zealous worker might hurt the company through unlawful acts, so might an unpaid zealot (who may know less about the law) or a dissatisfied worker (who may lack an outlet for his grievances). This does not mean that they are not 'employees.'" The Court further noted that the law offers alternative remedies for those concerns, such as "fixed term contracts, rather than hiring them 'at will'" or "negotiating with its workers for a notice period," and that "a company faced with unlawful (or possibly unlawful) activity can discipline or dismiss the worker, file a complaint with the Board, or notify law enforcement authorities." The foregoing settled the issue whether employees who are paid union organizers or who intend to act as "salts" are "employees" under the Act. Clearly they are employees entitled to the protections of the Act.

G. A. McManus is the president and owner of the Respondent and Tony Wall is Respondent's field supervisor and a vice president of Respondent. Wall is a former member of Local 776 and remains a member of the International. As a member of Local 776 he was on the Union's Examining Board and was on the Union's Executive Board. Juanita McManus, the wife of G. A. McManus, is the secretary/bookkeeper at Respondent, and holds the office of the secretary/treasurer at Respondent. G. A. McManus is also a former member of the local union who is now a member of the International. The Respondent formerly operated as a union contractor. However in the early 1980s the employees voted to decertify the Union and the Respondent has since operated as a nonunion contractor. Sometime before the decertification the Respondent had formerly been engaged in construction work but has since downsized its operation and operates principally as an "on call" electrical contractor while continuing to perform some regular and long-term work on a limited number of governmental projects and for a limited number of private employers. Respondent normally maintains a regular employee complement of approximately 21 employees including G. McManus, Juanita McManus, Wall, three estimators, three general foremen, foremen and electricians, electrical helpers or apprentices, and laborers. As Respondent is principally engaged in "on call" operations, its needs for employees fluctuate rapidly. Many of the jobs it is called on to perform involve supplementing the work of other employers who have bulges in their workload or performing emergency work. Consequently, many of these jobs are short term lasting only a few days. Respondent's vice president, Wall, is the field superintendent and is the sole person who makes the decision to hire and fire employees. However as the record shows in this case and as Wall acknowledged Wall does consider recommendations from others including Juanita McManus and estimators, foremen, and other employees as well as other nonunion employers. The record also shows that these recommendations are effective recommendations as in the case of Juanita McManus' recommendation that Wall talk to applicant William Coker and William Coker's subsequent recommendation of applicant Edward Foxworth.

In January 1995, and continuing into March 1995, Respondent received an influx of additional jobs requiring it to expand its work force to 35 employees until April when it began to downsize its work force as the influx of work subsided. According to the testimony of Wall and Juanita McManus, Respondent formerly accepted applications from all who applied for work but at some unspecified time in 1994 according to Wall or 1995 according to McManus ceased accepting applications unless Respondent was in a hiring mode as a result of the burden of paperwork resulting from accepting applications from all who applied. As McManus is the receptionist, she is usually the first to see the applicants who come into Respondent's office which is located in a large industrial park. She testified that as a result of the large amount of applicants who appear (often students of technical schools who are dropped off in the industrial park to apply for various unrelated jobs at all the employers in the office park), she is often inundated with applicants who do not possess the skills required by Respondent and are not specifically seeking work as electricians or electrical helpers. She testified she routinely tells those who come in that Respondent is not accepting applications and does not tender them an application unless Wall has informed her that Respondent is hiring. She acknowledged however that she does give out applications to those with electrical experience who particularly impress her or who are persistent in their request for a job. Respondent performs work for the Federal Government and is a Federal contractor and is party to a conciliation agreement with the Equal Employment Opportunity Commission and seeks to meet its goals by hiring minority employees whenever possible.

Wall explained the hiring process. He initially contacts former employees whose work he is familiar with when Respondent is in a hiring mode. His second source of applicants is that of employees or former employees of nonunion contractors with whom Respondent has worked in tandem on large projects involving other nonunion electrical contractors as well as Respondent. He explained that in these cases he may have personally observed the work of these employees

and/or his general foremen or other foremen may have done so. In some cases the other nonunion contractors may inform him that they are laying off employees and give him the names of specific employees they recommend to Wall. He also receives recommendations from his other employees concerning applicants. Wall's final resource if the other resources of employees fail to supply him with an adequate number of employees is to hire walk-in applicants who present themselves and apply for employment at Respondent's office. While Wall and Juanita McManus testified that they do not give applications to employees unless Wall has told McManus they are in a hiring mode and also that applicants are not hired unless they have filled out an application the record discloses otherwise. Thus in the case of William Coker, Juanita McManus gave Coker an application after he made a favorable impression on her and indicated he knew estimator Harry Varnadore, who promised to recommend him, although she had initially refused to give Coker an application and told Coker that Respondent was not hiring.

With respect to the applications for electricians and electrical helpers or apprentices, they serve to indicate to Respondent whether the applicant has participated in either a union apprenticeship or a nonunion apprenticeship in the past and whether the applicants recent experience has been with a union or nonunion electrical contractor. The record disclosed that Respondent has hired former union members or employees who have taken their apprenticeship with the Union but subsequently worked for nonunion contractors.

Local 776 Business Manager Donald Cockcroft[2] testified as follows: He has been business manager since 1990. The Union had a contractual relationship with Respondent until they were decertified in the early 1980s. In January and February 1995 the Union attempted to organize the employees of Respondent. In this regard the Union sent some employees to apply for work at Respondent. These employees were unemployed and were also sent there to organize Respondent's employees. They had learned from Gene Cockcroft that Respondent was hiring. Gene Cockcroft told Allen Benton that Respondent was hiring and Benton told him (Donald Cockcroft) and he suggested that Benton apply with Respondent. On February 9, 1995, Harry Varnadore, an estimator employed by Respondent, came to the union hall to inquire about the availability of some of his money in a pension fund which had been contributed in his behalf by contractors at a time when Varnadore was a member of the Union. During Varnadore's visit, Benton telephoned for Donald Cockcroft and then Union Organizer Tom Flood answered the phone and told him that Benton was on the phone. He told Flood to tell Benton he was busy, but he would return the call after he finished his business. Varnadore and he concluded their business and Varnadore left. Shortly thereafter, Varnadore came back in as he (Donald Cockcroft) was talking to Flood and walked up to both of them and said, "Listen I told Tony (Wall) that Allen (Benton) was a hard worker and a good man but he put all that Union crap all over his application and they wouldn't hire him." He (Donald Cockcroft) told Varnadore, "Yes, Harry, I know." During his conversation with Varnadore, Varnadore had told him Respondent had "plenty of work" and "needed people."

When the Union learned that Respondent was in a hiring mode in January 1995, Cockcroft testified that then Union Organizer Tom Flood sent union members out to Respondent's office to apply for work. All of the alleged discriminatees went out to Respondent's premises wearing IBEW insignia on ball caps or T-shirts or buttons except for Coker, Foxworth, Summers, Watson, and Joanne Thompson, the wife of Gary Emory who walked in with Emory who was himself wearing a union ball cap and a union T-shirt. All of the employees wearing union insignia except Allen Benton were told that Respondent was not hiring and were refused applications. Coker and Foxworth who displayed no union insignia and who listed nonunion employers rather than union employers as references were hired. Summers and Watson who are black were given applications to fill out but according to the testimony of Summers were interrogated as to whether they were union members. Although they denied they were union members, they were not hired. All of the alleged discriminatees were journeymen electricians with the exception of Joanne Thompson who testified she was applying for the position of helper which concededly requires little or no electrical experience, and she testified that she had extensive experience assisting her husband with electrical work although she had not been formally employed as a helper prior to her request for an application with Respondent.

Roy Allen Benton testified as follows: He is a journeyman electrician and finished his apprenticeship in all phases of electrical work but more heavily in industrial work. On February 2, 1995, he applied for work with Respondent. His cousin, Gene Cockcroft, who was employed by Respondent, told him Respondent was hiring. Gene Cockcroft had been an electrician and a member of the Union at one time, but was not a member at this time. When Benton initially went into the office he talked with Randy McManus. (Note: Randy McManus is the son of George and Juanita McManus and was employed as an estimator at the time.) When Benton came in he told R. McManus that he had heard Respondent was hiring and asked for an application. R. McManus who was sitting at his desk started to reach into his drawer for something, but then drew back and hesitated after he got eye level with the union insignia on Benton's jacket. At that point R. McManus hesitated and said he could take Benton's name and telephone number and have someone call him. R. McManus asked for a brief description of Benton's qualifications and he told R. McManus he "had went through the apprenticeship at the hall and I had worked a total of about seven (7) years with Cockcroft Electric and a combination of other contractors in town, some being union and some being non-union." At the time he told R. McManus that Gene Cockcroft had recommended him, Clay Cockcroft (who was employed as an estimator by Respondent) was in a nearby office and came over and inquired of Benton as to how he was related to Gene Cockcroft. At this time Benton was unemployed. Randy McManus told him they did not give out applications unless they were instructed to do so by Wall. At the time he applied, Randy McManus signed his unemployment form for him (indicating he had applied for work at Respondent). It had already been signed by the secretary of the

[2] It is noted that the surname "Cockcroft" appears several times. Thus Paul Cockroft was the leading union contractor in the area operating Cockcroft Electric, Gene Cockcroft is his son who was hired as an electrician by Wall in 1994, and was hired again by Wall in 1995, but terminated a few weeks thereafter. Clay Cockcroft is an estimator employed by Respondent.

Union. Benton then went to his parents' home around lunchtime and was told that Wall had called concerning employment. He called Wall and replied in the affirmative when Wall asked if he could run conduit if given the tools and materials. He told Wall he had been a journeyman electrician for quite a few years, and Wall told him to "come on down and fill in an application and I'll talk with you" before a meeting he had scheduled. Benton did so and filled out an application. The application shows that he served his apprenticeship through the Union and listed Cockcroft Electric and another union contractor and one nonunion contractor as previous employers and three union representatives as references. He also told Wall that he had served his entire apprenticeship with Cockcroft Electric and had worked there a total of 7 years. At this time Wall told him he would pay him $12 an hour rather than $11 an hour that he had listed as his desired pay on the application. This was a Thursday and Wall told him he was having trouble with an employee not showing up for work and coming in late and that if the employee did not come in on Friday, he would give Benton his job. Benton did not hear from Wall and came into Respondent's office around noon the following Monday and saw Wall there who told him the employee had come in for work. Wall also suggested other places that might be hiring indicating to Benton that he would not be hiring Benton. Benton has never since been called by Respondent. At the time Benton had come in to fill out his application he was wearing a Local No. 776 hat. At the time he filled out his application Juanita McManus told him that Respondent was hiring and, if he knew of anyone, to recommend them as they needed a "lot of people." At the time of his interview Wall mentioned Wando Terminal as the place that he was being considered for.

Edward Glenn Foxworth testified as follows: He has been a journeyman electrician 10 years and is a union member. He was unemployed in January 1995 and applied for work with Respondent. He is now employed by the Union as an organizer replacing Tom Flood who was the organizer previously. He went to Respondent to apply for work on February 2. He talked to a younger man whose name he does not know and told him he was out of work and inquired whether there were any openings and the man told him he would take his name and telephone number and give it to Wall who would get in touch with him. He neither asked for nor was offered an application. He did not display any type of union insignia. When he returned home that evening he had a message from Wall on his answering machine. He returned the call the next day (February 3) about 8 a.m. and Wall commenced interviewing him on the telephone and asked who he had worked for. He told him Bryant Electric (a nonunion employer) and Wall asked if he could come to the office to fill out an application. Wall agreed and he arrived at approximately 8 to 8:30 a.m. on February 3. When he arrived at the office, he did not wear any type of union insignia. Wall was there and asked the secretary to give him an application and she directed him to Wall's office to fill it out. Wall was in and out of his office while he was completing the application and Wall began asking him about his experience. Foxworth had put down ICS Electric (a nonunion contractor) as a reference, and Wall told him that he had hired some employees from ICS who could not run conduit and that he was having a problem with them. He then asked Foxworth if he could run conduit. Foxworth said that he could and that he liked running conduit and was good at it. Wall asked Foxworth if he had gone through an apprenticeship program and he told Wall that he had not, but had learned on the job. Wall asked him this same question two or three times during the interview and Foxworth responded in the negative each time. Wall told him that he had a list from ICS of employees who could run conduit and a list of employees who could not run conduit and that Foxworth was not on either list and said since Foxworth had only been with ICS a month that he guessed he had not been there long enough to be on either list. Foxworth agreed. Wall told him that he would start him at $11 an hour and would give him $12 an hour if he could run conduit. Foxworth agreed. Wall then got up from his desk and walked out and Foxworth saw Allen Benton's application on the desk with a yellow sticky paper on it with the writing thereon "Tony (Wall) he's okay, good hard worker, no IBEW" and in the middle of the sheet was a line through it and a note in a different handwriting "Tony he's worked for Paul Cockcroft." As set out above, Paul Cockcroft was a known union contractor. Wall then returned to his office and gave Foxworth directions to the Wando Terminal job and told him to get with Jay Eptein who would be his foreman. Foxworth reported to the job and went to work the same day (February 3).

In mid-February, Foxworth walked up at the end of the workday on a conversation between electricians Greg Doiley and Jay Gamble and Wall. Gamble turned to him and said that Wall had told him about a job Respondent was picking up at Cross Generating Station and was talking about transferring them to the job the end of February or beginning of March. Wall asked Foxworth if he lived near there and would mind going to that job. Foxworth "said sure, I'd be glad to, that's close to my house." Foxworth heard no more about the transfer from Wall but did learn that Gamble had been sent to the Cross job where he worked until early May from the end of February. Foxworth never displayed any union insignia until he learned of the Union sending a letter to Respondent naming him as a union organizer. (Note: The letter was received as G.C. Exh. 6 and is dated February 14, 1995, and names Foxworth and employees William C. Coker; Eugene V. Cockcroft, employed at the Westvaco jobsite; and Cliff S. Hubbard, at the Wando Terminal, as "Voluntary Union Organizers" and was sent by Donald M. Cockcroft, business manager, I.B.E.W. Local Union 776, on that date.) The day after the letter was sent Foxworth began wearing "[a] Union hat with the union logo on the front and union T-shirts with logos on the front and the back." Foreman Jay Eptein saw him wearing these items. Foxworth had no problems with his work and was never reprimanded for any deficiencies. Rather Eptein told him to "get with Wayne Dennis," another employee who he worked with for 4 days until Dennis quit. Thereafter he took over the work that Dennis had been doing in the building and worked without direct supervision. He began "laying some of the other group out just to keep them busy so they wouldn't have to go to Jay (Eptein) to ask him what to do." By laying the other group out, he means "showing them some pipe runs, just to keep them busy for the rest of the day, things like that." In response to earlier testimony at the hearing by Wall (who was initially called by the General Counsel) that Foxworth had made some mistakes in the installation of electrical boxes

which had to be redone, Foxworth testified he had not made any errors but that "some lower skilled electricians" had worked in the area "at the time of the trimming out, putting the actual receptacles, hooking these receptacles to the wires and putting them in the box" and that he, himself, had only pulled the wire and made the joints in the ceiling. Neither Eptein, Wall, nor any other supervisor ever said anything to him about electrical boxes being installed improperly. On March 10, Eptein handed him a layoff slip and told him it was due to a reduction in force. There were about 15 employees on the job that day when he, Coker, and two other employees were laid off. Most of the other employees were transferred to other jobs while two or three employees remained to finish small items on the Wando job. Steve Murrary, a top electrician's helper, was transferred from the Wando job to the Westvaco job before the layoff.

Greg Doiley, an electrician who had formerly worked on the Wando jobsite for Respondent, corroborated the testimony of Foxworth concerning the conversation wherein Wall had asked himself and Gamble and subsequently Foxworth if they would be willing to transfer to the Cross job as they lived in the area and that they had all agreed to do so. Doiley was terminated around mid-February after becoming involved in an altercation with the representative of a customer for whom Respondent was performing work. He testified that Gamble was transferred to Cross the day after the conversation with Wall.

William C. Coker III testified as follows: He has been a journeyman electrician 4 or 5 years and has been a member of the Union since August 1994. On January 26, 1995, he applied for work at Respondent. He had just been laid off at Metro (a nonunion contractor) and had gone to the union hall and been told by Union Organizer Tom Flood that Respondent was hiring. When he walked into Respondent's office he talked to Juanita McManus and asked her if they were giving out applications as he needed a job. She said "no, we're not taking applications right now." They started talking and he told her who he had worked for. Harry Varnadore, Respondent's estimator, had worked for Metro (a nonunion contractor) where he had worked. McManus said, "Well Harry is working for us now. Would you like to go in and see him?" He said he would and walked into Varnadore's office. Varnadore had recently had surgery and he asked how he was doing. Varnadore asked if he was looking for a job and he said he was. Varnadore asked if he had been given an application and he said he had not. Varnadore asked for his full name and number and said he would see what he could do for him. "With that I was turned to walk out of his office, back through where Ms. McManus sits at the front door and Ms. McManus gave me an application, I filled out the application, turned it back into her and walked out." This had taken place on a Friday. The following Monday he went out to look for a job, and Wall called while he was gone and left a message. He returned the call and Wall told him to come down. He did so and Wall looked over his application, discussed his qualifications and starting pay, and told him he would have to watch a safety film because he would be going to Westvaco. His application did not contain any references to his union affiliation. The listed former employers were nonunion employers. On both occasions when he had visited Respondent's office he had not worn any union paraphernalia. He started work January 30 at the Westvaco Paper Mill and worked there about 3 or 4 weeks. He did not show any affiliation with the Union until about February 17, a few days after he had been apprised by Union Organizer Tom Flood that the Union was sending a letter identifying him and Foxworth and Hubbard as union organizers. He then wore his union shirt and wore a union ball cap and handed out union literature before and after work and during lunch. He continued his union activity until he was laid off. After the union letter went out and he started to show his union sympathies and membership, he began to be isolated from other employees. Normally, the employees are paired up to do each project. However, after his display of union affiliation he was placed by himself by General Foreman Terrell Todd to run conduit to put together flex and end valves and make them up which was normally a two-person job. Subsequently, he was transferred to Miles Chemical the last week of February where he worked several (7) days with electrician Aubrey Johnson and was transferred to Wando State Port Authority for 2 days. He had not requested either transfer. Johnson was sent to Wando with him. He was laid off on March 10, Johnson was not laid off but was transferred to Cross. Employee Steve Taylor was transferred from Miles to Westvaco 2 or 3 days prior to his (Coker's) transfer to Wando. He denied ever having asked Wall how long Wall wanted him to take to do a job as testified to by Wall in Wall's initial testimony when called by the General Counsel. He had worked for General Foreman Terrell Todd at Westvaco, General Foreman Dan Foley at Miles, and Foreman Jay Eptein at Wando. He was never reprimanded by any management official of Respondent. At the time of his layoff on March 10, Respondent had several ongoing projects such as Cummings Diesel, Cross, a little work at Bosch, one man and a helper were transferred from Westvaco to the Miles Chemical Plant jobsite. Foreman Eptein laid him off and said he was sorry but he had to let him go because of a reduction in force.

Melvin Summers testified as follows: He has been a journeyman electrician about 6 years and has been a union member since 1994. He and Arthur Watson applied for work with Respondent on February 2, 1995. [Note: It was subsequently determined by a review of Watson's application that they applied on February 2, but that Summers' application incorrectly shows the date of January 30, 1995.] He (Summers) walked in and asked the secretary if Respondent was hiring and she replied she did not know. He asked if he could fill out an application and leave it and she said yes. While he was filling it out, a man about 5 feet 7 with blond hair and blue eyes came out of an office and asked him what position he was applying for. He identified Wall in the courtroom as the person who had spoken to him. The person asked him what position he was applying for and he told him mechanical electrician. The person asked him if he had gone to school and he replied that he had. The person then asked if he had gone through the Union and he told him he did not know what union he was talking about but had taken his apprenticeship through the Carolina Construction Training Counsel (C.C.T.C., a nonunion program). He continued to fill out the application and the person asked him if he had worked for any local companies and Summers told him, he had worked for Southern Contracting and H & R Allied (both nonunion contractors). The person asked him if he were part of the Union and Summers told him, no. He also

asked how long and Summers told him, no to this also. Summers gave the person his application and the person reviewed it, said they were looking for electricians and would keep it on file, and give him a call when an opening came up. The person also asked him if he had worked for any union contractors and Summers told him, no. At one point Summers asked the man why he was asking him so many questions about the Union and the man said these were just basic questions they asked. All of the former employers listed on his application were nonunion contractors. At the time he applied Summers was not wearing any indicia of union affiliation. Summers called three times (every other day) the following week and spoke to the secretary but was told either that Wall was not in or that he would get back to Summers. Wall has never returned his call. He has a broad range of experience in both industrial and commercial work.

On cross-examination Summers reviewed his application which lists the date of January 30, and testified that the correct date was February 2. He also testified he does not know where Watson is and has not seen Watson since that day. Summers had applied with Respondent after being told by Tom Flood that they were hiring. Allen Benton was recalled to the stand and testified that on February 2, when he had been in the Respondent's office he observed Summers and another man getting out of their car to approach the office as he was leaving that morning. He knew Summers. I credit Summers testimony as supported by Benton's corroborative testimony with respect to the date on Watson's application and find that Summers and Watson applied for work with Respondent on February 2, 1995.

Robert W. Wyndham Jr. testified as follows: He has been a journeyman electrician for 9 years and a member of the Union for 11 years. He went to Respondent's office on February 3, 1995, and asked Juanita McManus for an application and she said she was not giving out applications at the time. He was wearing a blue union cap with IBEW Local 776 on it. He then left. He telephoned Respondent's office a week later after hearing that Foxworth and Coker had been hired and was told by Juanita McManus that he had to talk to Wall. He left his telephone number but has never been called by Wall. He has previously worked at the State Port Authority for White Electric, Westvaco for several contractors such as Coastal, Metro, and H. R. Allen, doing the same type of work engaged in by Respondent. Tom Flood knew he was looking for work and suggested he apply with Respondent.

James Paul Michi testified as follows: As of February 1996, he will have been a journeyman electrician for 2 years. He is experienced in industrial and commercial work. On January 30, 1995, he applied for work with Respondent. He spoke to the secretary and asked for an application. She told him she would let him talk to Wall which he did in Wall's office. Wall asked if he was looking for work and he replied, "yes, sir." Wall asked what the last job he had worked on was and he said he had worked with White Electric at the Wando Terminal. Wall asked if he had completed an apprenticeship program and he said he had with JATC (the Joint Apprenticeship Training Committee) and Wall said, "oh, you're union, and I said yes." Wall said, "oh, you're Larry's brother," and "I said yes, I'm Larry's brother and Doug's brother." Larry and Doug are both union members. Doug is president of the Local 776 and Larry has a membership in the International. Larry had previously worked for Wall when Respondent was a union contractor. He then asked if there was any work and Wall told him things were "winding up" and should "break loose" in "a couple of weeks" and asked him to leave his name and number which Michi did. He was not given an application. Michi did not hear from anyone at the Respondent. Two weeks later union organizer Tom Flood asked him to go there again to apply and he did so on February 13 and was again sent in to talk to Wall who told him things had not "cut loose like he thought it would" and that he still had his telephone number. Wall refused his request for an application and said they were not taking them at that time. Michi has worked at several of the jobsites such as Westvaco Paper Mill, Wando Terminal, and Miles. He was unemployed at the time he applied with Respondent.

Carolyn Pollack testified as follows: She applied for work with Respondent on February 13. She walked into the office and asked the secretary (Juanita McManus) if they were hiring. McManus asked her what experience she had. She told McManus she had 4 years of apprenticeship and was a union electrician. At the time she wore a baseball cap with the Union's logo Local 776 on the top. She was not given an application. McManus took her telephone number and told her she would call if anything happened. She did not receive any further contact from Respondent. Nor did she contact the Respondent again. She had been told to apply at Respondent by Union Organizer Tom Flood who told her Respondent was hiring. At the time she applied she had only within a month prior thereto became a journeyman by taking a test to qualify at the Union's office but had 4 or 5 years' experience prior to this. She had also gone through an apprenticeship training program with the Coastal Carolina Training Council (the nonunion sponsored apprenticeship program) but had dropped out the fourth year of the program because of changes in the program. She was terminated from the program on one occasion because the company she was working for was requiring her to do plumbing work rather than electrical work. She subsequently rejoined the program after being sponsored by H. R. Allen (a nonunion contractor).

Gary Lee Emory testified as follows: He has been a journeyman electrician for 15 years and has extensive experience in both commercial and industrial work much of it in other areas of the country. He has been a member of the IBEW for 17 years. He and his wife, Joanne Thompson, applied together for work at the Respondent on February 22, 1995. He applied for a job as a journeyman electrician and his wife was applying for a job as a helper as she has had experience assisting him in electrical work. He asked Juanita McManus for an application and asked if they were hiring. She told him they were not hiring. He told her he had plenty of experience and needed a job. She asked him if he was looking for new work. He was wearing a union cap and McManus kept looking at it during the time he was there. His wife asked for an application after he finished applying and was also refused. He was a member of a different local in Texas at the time, but has subsequently joined Local 776 about 2 months after applying with Respondent. He had been directed to Respondent after he checked in at Local 776 and asked if they knew of any work. He did not leave his telephone number with Respondent although he had told McManus his name. He, subsequently, was called by Flood who told him Respondent wanted to hire both him and his wife but he was already employed and his wife was self-em-

ployed elsewhere, Although he had asked Flood if he could help organize, he was looking for a job as he needed to work when he applied at Respondent. His wife did not wear anything showing union affiliation.

Joanne Thompson testified as follows: She is the wife of Gary Emory and has assisted him in electrical work around the house over the last 10 years, but has no experience in industrial or commercial work. She applied at Respondent on February 22, 1995. When Emory asked for an application McManus told him they were not taking applications and their estimators were out looking for work and there should be work in a month or so. After Emory talked to McManus, she (Thompson) asked McManus her name and said so you are not taking applications and McManus said no and so they left. She did not indicate what job she was applying for. She did not leave a telephone number and has had no further contact with Respondent. She is not a union member. She opened up a tackle shop in March 1995, and is still in business.

Joel Yon testified as follows: He has been a journeyman electrician for 6-1/2 years and a member of the Union for about 2 years. He applied for work at Respondent on March 9, 1995. He walked in the office and asked Juanita McManus for an application and she said they were not hiring and were not accepting applications. He did not tell her his qualifications or leave a telephone number or his name. He was wearing a Local 776 ball cap at the time he applied. He left and he had no further contact with the Respondent. He has both industrial and commercial experience. He has worked on several jobs in the Charleston, South Carolina area including Westvaco. Prior to applying at Respondent he had signed a work list at the union hall and Tom Flood told him Respondent was hiring.

Gary McCutcheon testified as follows: He has been a journeyman electrician approximately 13 years and a union member 16 years. He applied for work with Respondent on February 9, 1995. He talked to Juanita McManus and told her he had been an electrician for quite a few years, was a good electrician and needed a job, and asked if he could fill out an application. She told him they had all the men they needed. He asked if he could leave his number and name and asked if there was anyone else in the office he could talk to. She said there was not but took down his name on a yellow post-it sticker. At the time he applied he was wearing a union hat and coat. At one point Juanita McManus asked him if he had any apprenticeship training and he pointed to the insignia on his hat and told her he had apprenticed through the Union. He was not allowed to fill out an application. He took a business card from Respondent. After he left he telephoned Respondent but did not identify himself and talked to Juanita McManus who answered the phone and told her he was an electrician in the area with 10 years' experience and she told him that Wall would probably like to talk to him and asked for his telephone number and he gave her a false telephone number. He subsequently called a "couple of other times" using his own name to see if Respondent had any work but was not contacted by Respondent although he has an answering machine. He has worked at the Westvaco Paper Mill. He had initially been told by Tom Flood that Respondent was hiring when he went to the union hall to have his unemployment slip signed.

At the hearing the parties stipulated that the following employees were hired by Respondent for the positions stated on the dates listed in 1995: *Cliff Hubbard*—electrician February 7; *Aubry Johnson*—helper February 13—promoted to electrician; *Kevin Knight*—helper—November 7; *Charles Morant*—electrician January 30; *Kenneth Polk*—electrician January 31; *David Salvelle*—helper September 25; *Eugene Cockcroft*—electrician January 31; *William Coker*—electrician January 31; *Gregory Doiley*—electrician February 6; *Edward Foxworth*—electrician February 3; *Bruce Gaillard*—electrician January 30; *Joseph Gamble*—electrician February 4; *Christopher Gregory*—temporary laborer October 30; *Adrian Hamilton*—helper February 6; *Arthur Harris*—electrician August 15; *Mick Van Allen*—lineman November 16; *Mark Weisse*—electrician March 6; *Keith Allen Wise*—helper November 4; *James Wright*—laborer February 14.

Harry Varnadore testified he has been an estimator with Respondent for 17 months and had been an estimator for Metro Electric Company for 6 or 7 years prior to joining Respondent. As an estimator he estimates the costs of the electrical portion of jobs, submits the Respondent's bids to the general contractors, and, if Respondent is chosen to do the work, he sees to it that the materials get to the job and keeps the "paper trail on the job." He works in the office and goes to the jobsite to check if the job is progressing according to schedule. He denied having authority to hire employees or having ever hired employees for Respondent or possessing any other indicia of supervisory status. He does recommend applicants for hire, but the decision to hire is made by Wall. He was a member of IBEW Local 776 for 18 years but has not been a member of the local union since 1986 or 1987. In early 1995, around February, he went to the union hall to inquire about whether he could utilize a union health benefit fund program account in his name to contribute to hospital bills incurred by an operation and associated treatment he had recently undergone. While he was talking to Business Manager Donald Cockcroft, he learned that electrician Allen Benton was looking for work. He knew Benton from working with him at a previous employer. He asked Donald Cockcroft if this was the same Benton who had worked for Cockcroft Electric and told Donald Cockcroft that Benton was a good man and he would tell Wall when he got back to the office that Benton would be a good man to hire which he did. Donald Cockcroft did not tell him that Benton had applied for work at Respondent and he was not aware of this. He denied telling Donald Cockcroft that Respondent would not hire Benton because he had put that union bull all over his application. In addition he recommended Coker to Wall as a good strong dependable worker after talking to Coker when he came into the office to apply. On cross-examination he acknowledged having told Wall that Benton was a union member.

General Foreman William Todd testified as follows: He supervises Respondent's work at the Westvaco Paper Mill which involves running conduit, and pulling wire and cable. There may be a job lasting 2 months and another lasting 2 weeks. There have been slow times when Respondent cut back to two employees at this site for 2 to 3 months. He supervised Coker at the Westvaco jobsite. He primarily had Coker changing out some conduits entering into a panel and put them into another panel because of an engineering error. He usually had Coker paired with another employee, pri-

marily Gene Cockcroft. Occasionally there are jobs an employee can do by himself and he utilizes only one employee on a job. He had Coker working by himself on February 3 and 4, a Thursday and Friday during the payroll period of January 30, 1995, to February 5, 1995, changing conduit from one panel to another. Also Coker worked alone 2 days during the week of February 13, changing out conduits. This was not unusual because he had three jobs going on at that time and had only eight to nine employees that week. He assigned Coker to work individually on the above days because of the nature of the job. Todd acknowledged that he had a discussion with Coker about the Union when Coker "brought some papers into the trailer, and was handing them out about the Union." He told Coker he did not think anyone on the jobsite "would be interested in going Union." He did not stop Coker from handing the papers out but did tell Wall about it "because I felt like I needed to let somebody know that."

On cross-examination Todd testified that it is not necessary to have two employees run three quarter conduit and Coker only had 5 feet of conduit that he had to hold at one time and work with, which any experienced journeyman such as Coker was, could do. After 4 weeks Coker was transferred to another job. The work Coker was doing at Westvaco was finishing up although there was additional work at Westvaco which continued after Coker's transfer. Coker was laid off as a reduction in force as far as he knows. Coker was a good worker for him and the layoff had nothing to do with his work.

Analysis

With respect to the 8(a)(1) violations, I find that the Respondent violated Section 8(a)(1) of the Act as follows: I credit the testimony of Union Business Manager Donald Cockcroft that Respondent's estimator, Harry Varnadore, told him that he had put in a good word for applicant Benton but that Benton had put all that "union crap" on his application indicating that Benton would not be hired because of this. Cockcroft's testimony is buttressed by that of Foxworth who testified he saw a yellow note sticker on Benton's application with the note "good worker—No IBEW" with the note "No IBEW" crossed out. I do not credit Varnadore's denial that he told Union Business Manager Donald Cockcroft that Benton would not be hired, because he had put all that "union bull" on his application. I find that Varnadore had the authority to recommend employees for hire and did so effectively in the case of his recommendation of Coker who was hired and informed Wall that Benton was a union member. The record further discloses that Varnadore attends management meetings and has the authority to make contractual bids on behalf of Respondent and is a supervisor who acted as its agent in the issuance of the unlawfull threat of a denial of employment. I thus find that Respondent violated Section 8(a)(1) of the Act by the threat issued to Union Business Manager Donald Cockcroft by Varnadore that Benton was not hired because of his union affiliation thus sending the message that applicants for employment would not be hired because of their union affiliation. *Tyger Construction Co.*, 296 NLRB 29 (1989).

I find that the General Counsel has not established that Respondent violated Section 8(a)(1) of the Act by interrogating applicants Summer and Watson regarding whether they had undergone their apprenticeships through the Union or had worked for union contractors. The General Counsel contends in his brief that since Summers and Watson are black, they were permitted to fill out applications because of Respondent's desire to meet its affirmative action goals. No reference appeared on the applications to any union, and they did not wear any union insignia. They were questioned by an unidentified individual on Respondent's premises as to whether they had obtained their apprenticeship under the Union or had worked for any union contractor. I credit Summers that this did in fact occur. The General Counsel contends that this showed that Respondent suspected they were union members. However, I note that in Summers' affidavit he described the person who questioned him as having blond hair and blue eyes and identified Wall at the hearing as the person who had spoken to him. I note by my observation of Wall at the hearing that he has black hair which is graying and does not have blue eyes. Wall denied questioning or meeting Summers and Watson, and I credit him in this regard. I conclude that Wall was not the person who interrogated Summers and Watson. The person who interrogated Summers and Watson, has not been identified on this record, and I accordingly must dismiss the allegation of interrogation of Summers and Watson as it has not been established that this unidentified person was an agent of Respondent. Additionally, as this crucial element has not been established, I also conclude that the General Counsel has failed to establish that Summers and Watson were discriminated against by reason of their union affiliation or Respondent's perception of their union affiliation. Summers' testimony establishes and the applications disclose that there was no evidence of Respondent's identification of Summers and Watson as union supporters. Thus the General Counsel has failed to establish that Respondent had knowledge of Summers' and Watson's union affiliation. I accordingly shall recommend dismissal of the allegations of discrimination against Summers and Watson.

The filing of applications by the alleged discriminatees occurred at a time when the Union was engaging in an active "salting" campaign in an attempt to organize Respondent's employees and Respondent was receiving several inquiries from union members and supporters who openly displayed union insignia. Those applicants who displayed union insignia were routinely turned away by Juanita McManus and not allowed to file applications. Respondent was a former union contractor until the decertification of the Union in the early 1980s and Respondent's counsel stressed in his questioning of Wall at the hearing and in his brief that Respondent's president, McManus and Wall are both former members of the Union and have since transferred their membership to the International, and that Respondent has hired some union employees in the past or employees who may have been perceived as union adherents (i.e., employee Gene Cockcroft who is the son of a union contractor, Paul Cockcroft, and the cousin of Union Business Manager Donald Cockcroft). However, I conclude that although Respondent's management may have no bias against the union as an institution and have elected to partake of the benefits of membership for themselves, they have also decided to oppose the Union's efforts to organize their own employees. The decertification of the Union by Respondent's employees appears from the testimony of Wall and Juanita McManus to have occurred close

in time to the change of Respondent's operations from that of a general contractor involved primarily in construction work to a smaller "on call" and repair operation with a limited amount of regular private and government work to do. Respondent's utilization of its stated hiring criteria (1. hiring former employees first, 2. hiring employees recommended by other employees or by other nonunion contractors or who have been observed by Respondent's representatives on the jobsite as these contractors work in tandem with each other on large projects, 3. hiring from unknown applicants only as a last resource,) all operate to ensure the hiring of nonunion applicants and to screen out prounion applicants. It is clear from the record in this case that Respondent's antiunion animus has been demonstrated by virtue of Varnadore's comments and the note on the yellow sticker regarding Benton's union affiliation. The change in the hiring process from taking all applications to the restrictive practice now engaged in by Respondent of only taking applications when Respondent is hiring ensures that Respondent is able to screen out union adherents by merely telling them Respondent is not hiring and refusing to give them applications. Respondent routinely turned away applicants who wore prounion insignia and closely scrutinized others for prounion sympathies in order to ensure it did not hire union adherents. The record thus supports a finding that all of the alleged discriminatees who were not hired by Respondent except Summers and Watson were identified as union supporters or perceived union supporters in contrast to the hiring of employees who displayed no union insignia and/or no recent union job experience. I conclude that during the period in question that Respondent was actively hiring employees for an upsurge in work that occurred during the January through March period. However because of its demonstrated animus, it precluded the consideration and hire of known or perceived union adherents. I find that this animus was a substantial and motivating factor in the refusal to permit the prounion applicants to file applications or to hire prounion applicants. I also find that the Respondent has failed to establish by the preponderance of the evidence that it would not have hired these applicants in the absence of their prounion sympathies. I thus find that Respondent violated Section 8(a)(3) and (1) of the Act by its refusal to consider and hire the discriminatees. *Manno Electric*, 321 NLRB 278 (1996). In the instant case all of the elements of a discriminatory refusal to hire have been established. *Big E's Foodland*, 242 NLRB 963, 968 (1979), where the Board stated:

> Essentially, the elements of a discriminatory refusal-to-hire case are the employment application by each alleged discriminatee, the refusal to hire each, a showing that each was or might be expected to be a union supporter or sympathizer, and further showings that the employer knew or suspected such sympathy or support, maintained an animus against it, and refused to hire the applicants because of such animus.

With respect to Coker and Foxworth, I find that Respondent has violated Section 8(a)(3) and (1) of the Act by its transfer of Coker and its layoff of both Coker and Foxworth because of their support of the Union in its organizing efforts of Respondent's employees shortly after they had been named by the Union as the unit organizers among Respondent's employees. Respondent's actions in transferring Coker came shortly after the issuance of the Union's letter and the layoff of both Coker and Foxworth came shortly after the hire of other employees. It is apparent that the Respondent could have retained both Coker and Foxworth and would logically have done so but for its animus toward them because of their union support. I credit Foxworth's unrebutted testimony as bolstered by the testimony of employee Doiley that Wall had tacitly agreed to transfer Foxworth to the Cross project which would have been closer to Foxworth's home and which project continued following the layoff of Foxworth. I do not credit the testimony of Wall concerning the alleged error of Foxworth in installing sockets on a project and the alleged question by Coker as to how long Wall wanted him to drag out his work on a project as having anything to do with the employment decisions of Respondent concerning them. I credit the testimony of Foxworth who denied installing the circuits and of Coker who denied making the comments. See *Grand Canyon Mining Co.*, 318 NLRB 748 (1995), wherein the Board found unlawful a discriminatory transfer (such as occurred in the case of Coker) followed by a layoff for engagement in union activities. I thus find that the General Counsel has met its burden of persuasion that the Respondent's actions in transferring Coker and terminating both Coker and Foxworth were motivated by Respondent's antiunion animus after their identification as union supporters and that Respondent has failed to demonstrate that these actions would have been taken against Coker and Foxworth even in the absence of their engagement in union activities *Manno Electric*, supra. I find the General Counsel has not established that the Respondent's actions in isolating Coker were motivated by Respondent's antiunion animus after the Union sent Respondent a letter on or about February 14 identifying Coker as an organizer for the Union. In making this determination, I note that Coker's testimony was vague and not definitive as to when and how he was isolated and the specifics of each occasion. However assuming arguendo, that the General Counsel has established that the alleged isolation of Coker was in retailiation for his engagement in union activities, I find it has been rebutted by the preponderance of the evidence as General Foreman Todd testified without rebuttal that he had Coker working by himself on two specific occasions prior to February 14, when the letter was sent. Coker's testimony did not specify any dates after the letter was sent when he was isolated and there is nothing in the record to support the contention that the alleged isolation was any more frequent than that which had occured prior to the sending of the letter.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel has failed to establish that Respondent violated Section 8(a)(1) of the Act by its alleged interrogation of employees Melvin Summers and Arthur Watson concerning their affiliation with a union and that Respondent violated Section 8(a)(3) and (1) of the Act by the alleged unlawful refusal to hire them.

4. Respondent violated Section 8(a)(1) of the Act by its threat to deny employment to job applicants because of their union affiliation.

5. Respondent violated Section 8(a)(3) and (1) of the Act by its transfer of its employee William Coker and its layoff of employees Coker and Edward Foxworth.

6. Respondent did not violate the Act by the alleged isolation of Coker.

7. Respondent violated Section 8(a)(3) and (1) of the Act by its refusal to hire applicants Roy Allen Benton, Robert Wyndum, James Paul Michi, Carolyn Pollack, Joel Yon, Gary McCutcheon, Joanne Thompson, and Gary Emory.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in violations of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act and post the appropriate notice.

It is recommended that Respondent offer immediate reinstatement to employees William Coker and Edward Foxworth to their former positions or to substantially equivalent ones, if their former positions no longer exist and that it hire employees Roy Allen Benton, Robert Wyndum, James Paul Michi, Carolyn Pollack, Joel Yon, Gary McCutcheon, Joanne Thompson, and Gary Emory to those positions to which they would have been hired, but for Respondent's discrimination against them, discharging if necessary any employees who were hired in their place and in the event those jobs no longer exist, place them on a preferential hire list for the next jobs that become available. Final determination of job availability and backpay liability may be made in the compliance phase of this proceeding. The foregoing discriminatees shall be made whole for all loss of backpay and benefits sustained as a result of the discrimination against them by Respondent with backpay and benefits computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, M & M Electric Co., Inc., Charleston, South Carolina, is officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with nonhire because of their union affiliation.

(b) Transferring and terminating employees because of their union support or affiliation.

(c) Refusing to accept applications from employees and refusing to hire employees because of their union affiliation.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranted them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order offer reinstatement to William Coker and Edward Foxworth to their former positions or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees in those positions.

(b) Within 14 days from the date of this Order offer to hire applicants Roy Allen Benton, Robert Wyndum, James Paul Michi, Carolyn Pollack, Joel Yon, Gary McCutcheon, Joanne Thompson, and Gary Emory to the jobs for which they applied or, if those jobs no longer exist, place them on a preferential hire list for the next positions that become available for which they are qualified.

(c) Make Coker, Foxworth, and all the discriminatees who Respondent failed to hire whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discrimination and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful discrimination will not be used against them in any manner.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Charleston, South Carolina, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 8, 1995.

[3] Interest shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

With respect to the alleged interrogation and refusal to hire Summers and Watson and the alleged isolation of Coker and all violations not specifically found, the complaint is dismissed.